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PART VII

GOVERNMENT OF MEGHALAYA

ORDERS BY THE GOVERNOR

NOTIFICATIONS

The 30th January 2004

No.LL(B).28/2003/100—The following Acts & Ordinances of 2003, as passed by the Parliament and assented by the President of India and published in the Gazette of India Part I Section I, on the date indicated below is hereby republished for general information.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 16th October, 2003/Asvina 24, 1925 (Saka)

THE NATIONAL TAX TRIBUNAL ORDINANCE, 2003

No. 3 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement—(1) This Ordinance may be called the National Tax Tribunal Ordinance, 2003.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. Definitions—In this Ordinance, unless the context otherwise requires,—

(a) “appointed date” means the date on which the National Tax Tribunal is established under section

- (b) "Bench" means a Bench of the National Tax Tribunal;
- (c) "Board of Direct Taxes" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963; (54 of 1963.)
- (d) "Board of Excise and Customs" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963; (54 of 1963.)
- (e) "Central Excise Act" means the Central Excise Act, 1944; (1 of 1944.)
- (f) "Central Excise Tariff Act" means the Central Excise Tariff Act, 1985; (5 of 1986.)
- (g) "Chairperson" means the Chairperson of the National Tax Tribunal;
- (h) "Companies (Profits) Surtax Act" means the Companies (Profits) Surtax Act, 1964; (7 of 1964.)
- (i) "Customs Act" means the Customs Act, 1962; (52 of 1962.)
- (j) "Customs, Excise and Service Tax Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962; (52 of 1962.)
- (k) "Customs Tariff Act" means the Customs Tariff Act, 1975; (51 of 1975.)
- (l) "Expenditure-Tax Act" means the Expenditure-tax Act, 1987; (35 of 1987.)
- (m) "Gift-tax Act" means the Gift-tax Act, 1958; (18 of 1958.)
- (n) "Income-tax Act" means the Income-tax Act, 1961; (43 of 1961.)
- (o) "Income-tax Appellate Tribunal" means the Income-Tax Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961; (43 of 1961.)
- (p) "Interest-tax Act" means the Interest-tax Act, 1974; (45 of 1974.)
- (q) "Judicial Member" means a Member of the National Tax Tribunal and includes the Chairperson.
- (r) "Law officer" means the Attorney-General for India, the Solicitor General of India or the Additional Solicitor General of India;
- (s) "Member" means a Member (whether Judicial or Technical) of the National Tax Tribunal and includes the Chairperson;
- (t) "National Tax Tribunal" means the National Tax Tribunal established under section 3;
- (u) "notification" means a notification published in the Official Gazette;
- (v) "prescribed" means prescribed by rules made under this Ordinance;
- (w) "Supreme Court" means the Supreme Court of India;
- (x) "Technical Member" means a Member of the National Tax Tribunal who is not a Judicial Member within the meaning of clause (q);

(y) "Wealth-tax" means the Wealth-tax Act, 1957 (27 of 1957.)

(z) words and expressions used in this Ordinance but not defined herein and defined in the Central Excise Act, Central Excise Tariff Act, Customs Act, Customs Tariff Act (hereinafter referred to as indirect taxes) or the rules made thereunder or in chapter V of the Finance Act, 1994 or of 1994 shall have the meanings respectively assigned to them by such Acts or the rules made thereunder;

(za) words and expressions used in this Ordinance but not defined herein and defined in the Income-tax Act, Wealth-tax Act, Gift-tax Act, Expenditure-tax Act, Interest-tax Act or the Companies (Profits) Surtax Act (hereinafter referred to as direct taxes) or the rules made thereunder shall have the meanings respectively assigned to them in the said Acts or the rules made thereunder.

CHAPTER II

ESTABLISHMENT OF THE NATIONAL TAX TRIBUNAL

3. Establishment of the National Tax Tribunal.—The Central Government shall, by notification in the Official Gazette, establish with effect from such date as may be specified therein, a Tax Tribunal to be known as the National Tax Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Ordinance.

4. Composition of National Tax Tribunal.—The National Tax Tribunal shall consist of a Chairperson and such number of judicial and Technical Members as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.

5. Constitution and jurisdiction of Benches.—(1) The jurisdiction of the National Tax Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson.

(2) In case of an appeal filed against an order passed by the Income-tax Appellate Tribunal, a Bench shall consist of a Judicial Member and a Technical Member (Direct Tax).

(3) In case of an appeal filed against an order of the Customs, Central Excise and Service Tax Appellate Tribunal, a Bench shall consist of a Judicial Member and a Technical Member (Indirect Tax).

(4) The Benches of the National Tax Tribunal shall ordinarily sit at any place in the National Capital Territory of Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify;

Provided that the Chairperson may for adequate reasons permit a Bench to hold its temporary sitting for a period not exceeding fifteen days at a place other than its ordinary place of seat.

(5) The Central Government shall notify the areas in relation to which each Bench of the National Tax Tribunal may exercise its jurisdiction,

(6) The Central Government shall determine the number of Benches required for Direct Taxes or Indirect Taxes in consultation with the Chairperson.

(7) The Central Government may in consultation with the Chairperson transfer Member from headquarters of one Bench in one State to the headquarters of another Bench in another State or to the headquarters of any other Bench within a State.

6. Qualifications for appointment of Chairperson and Members:— (1) The Chairperson of the National Tax Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court

(2) A person shall not be qualified for appointment as Judicial Member unless he—

- (i) is, or has been, a Judge of a High Court; or
- (ii) has, for at least twenty years, been an Advocate of a High Court or has partly held a Judicial Office or has partly been in practice as an Advocate for a total period of twenty years; or
- (iii) is, or has been a Member of the India Legal Service and has held the post of Additional Secretary or above for at least one years;
- (iv) is, or has been, a Judicial Member of the Income tax Appellate Tribunal and has held the post of either President or Senior Vice-President or has held the post of Vice-President for at least two years or has held the post of Judicial Member for at least seven years.
- (v) is, or has been, a Judicial Member of the Customs, Excise and Service Tax Appellate Tribunal and has held the post of either President or has held the post of Vice-President for at least two years or has held the post of Judicial Member for at least seven years.

(3) A person shall not be qualified for appointment as Technical Member (Direct Tax), unless he—

- (i) is or has been, an Accountant Member of the Income tax Appellate Tribunal and has held the post of either President or Senior Vice-President or has held the post of Vice President for at least two years or has held the post of Accountant Member for at least seven years;
- (ii) is, or has been, a Chairman or a Member of the Board of Direct Taxes or has held the post of Chief Commissioner or equivalent post for at least one year;
- (iii) is, or has been, a Chairman, Vice-Chairman or a Member of the Income Tax Settlement Commission; or
- (iv) has been for at least twenty years in practice as a Chartered Accountant under the Chartered Accountants Act, 1949 (38 of 1949) and is a person of ability, integrity and standing having special knowledge and professional experience in the field of direct taxes.

(4) A person shall not be qualified for appointment as Technical Member (Indirect Taxes) unless he—

- (i) is, or has been, a Technical Member of the Customs, Excise and Service Tax Appellate Tribunal and has held the post of Vice-President for at least two years or has held the post of Technical Member for at least seven years; or
- (ii) is, or has been, a Chairman, Vice-Chairman or a Member of the Customs and Central Excise Settlement Commission; or
- (iii) is, or has been, a Chairman or a Member of the Board of Excise and Customs; or
- (iv) is, or has been, a Member of the India Customs and Central Excise Service (Group 'A') and has held the post of Chief Commissioner of Customs or Chief Commissioner of Central Excise or an equivalent post for at least one year.

7. Appointment of Chairperson and Members.—(1) Subject to the provisions of sub-section (2), the Chairperson and every Member shall be appointed by the Central Government.

(2) The Chairperson and Members shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—

- (a) the Chief Justice of India or his nominee;
- (b) the Chairperson of the National Tax Tribunal;
- (c) the Secretary in the Ministry of Law and Justice (Department of Legal Affairs);
- (d) the Secretary in the Ministry of Finance (Department of Revenue).

(3) No appointment of the Chairperson or a Member shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

8. Term of office of Chairperson and Members.—The Chairperson and every Member of the National Tax Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office but shall be eligible for re-appointment:

Provided that no Chairperson or Member shall hold office as such after he has attained—

- (a) in the case of Chairperson, the age of sixty-eight years; and
- (b) in the case of any other Member, the age of sixty-five years.

9. Resignation of Chairperson and other Members.—The Chairperson or a Member of the National Tax Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office.

10. Salary and allowances.—(1) Subject to the provisions of this Ordinance, the salary and allowances and other terms and conditions of the Chairperson shall be the same as applicable to a sitting Judge of the Supreme Court, but not vacation shall be allowed:

Provided that if a person who, immediately before the date of assuming the office as the Chairperson was in receipt of or being eligible so to do, had elected to draw a pension in respect of any previous service or office held by such person under the Government of the Union or of a State, his salary in respect of service as Chairperson shall be reduced by the amount of that pension.

(2) A Member shall draw salary of a High Court Judge and other allowances and terms and conditions of his service shall be the same as applicable to a Secretary to the Government of India.

Provided that if a person who, immediately before the date of assuming the office as Member was in receipt of or being eligible so to do, had elected to draw a pension in respect of any previous service held by such person in connection with the affairs of the Union or of a State, his salary in respect of service as Member shall be reduced to the extent of that pension.

(3) The salary and allowances and other terms and conditions of service of Chairperson or a Member of the Tribunal shall not be varied to his disadvantage after appointment.

11. Removal and suspension of Chairperson and other Members.—(1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member who—

- (a) has been adjudged an insolvent; or

- (b) has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude," or
- (c) has become physically or mentally incapable of acting as such Chairperson or Member of the National Tax Tribunal; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Chairperson or Member of the National Tax Tribunal; or
- (e) has abused his position as to render his continuance in office prejudicial to the public interest;

(2) The Chairperson or Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges,

(3) The Central Government may suspend from office the Chairperson or a Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or a Member referred to in sub-section (2).

12. Officers and employees of National Tax Tribunal.—(1) The Central Government shall provide the National Tax Tribunal with such officers and employees as it may deem fit,

(2) The salaries and allowances and other conditions of service of officers and employees of the National Tax Tribunal shall be such as may be prescribed.

(3) The officers and employees of the National Tax Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(4) The officers and other employees shall be appointed on the recommendations of a Selection Committee constituted by the Central Government.

13. Appearance before the National Tax Tribunal.—(1) A party to an appeal other than Government may either appear in person or authorise one or more chartered accountants or legal practitioners or any person duly authorised by him or it to present his or its case before the National Tax Tribunal.

(2) The Government may authorise one or more legal practitioners or any of its officers to present its case before the National Tax Tribunal.

Explanation;—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.

14. Members to act as Chairperson or to discharge his functions in certain circumstances.—(1) In the event of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Central Government may designate the senior most Member to act as the Chairperson until the day on which a Chairperson or a new Chairperson, appointed in accordance with the provisions of this Ordinance to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause the Central Government may authorise the senior-most Member to discharge the function of the Chairperson until the date on which the Chairperson resumes his duties.

(3) The senior-most member designed to act or to discharge functions of the Chairperson under sub-sections (1) and (2) shall continue to draw salary and allowance of a Member.

CHAPTER III

JURISDICTION, POWERS AND FUNCTIONS OF THE NATIONAL TAX TRIBUNAL

15. Appeal to the National Tax Tribunal—(1) An appeal shall lie to the National Tax Tribunal from every order passed in appeal by the Income-tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal, if the National Tax Tribunal is satisfied that the case involves a substantial question of law.

(2) The Chief Commissioner or the Commissioner of Income-tax or the Chief Commissioner or Commissioner of Customs and Central Excise, as the case may be, or an assessee aggrieved by any order passed by the Income-tax Appellate Tribunal or any person aggrieved by any order passed by the Customs, Excise and Service Tax Appellate Tribunal (here in after referred to as aggrieved person), may file an appeal to the National Tax Tribunal and such appeal under this sub-section shall;

- (a) be filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the aggrieved person or the Chief Commissioner or Commissioner, [as the case may be.
- (b) be in the form of a memorandum of appeal precisely stating therein the substantial question of law involved, and
- (c) be accompanied by such fees as may be prescribed.

Provided that separate form of memorandum of appeal shall be filed for matters involving direct and indirect taxes.

Provided further that the National Tax Tribunal may entertain the appeal within sixty days after the expiry of the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal in time.

(3) Where an appeal is admitted under sub-section (1), the National Tax Tribunal

- (a) shall formulate the question of law for hearing the appeals and
- (b) may also determine any relevant issue in connection with the question so formulated —
 - (i) which has not been so determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal; or
 - (ii) which has been wrongly determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal, and shall decide the question of law so formulated and the other relevant issue so determined and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(4) Where in any appeal under this section, the decision of the Income-tax Appellate Tribunal or the Customs, Excise and Service Tax Appellate Tribunal involves the payment of any tax or duties, the assessee or the aggrieved person, as the case may be, shall not be allowed to prefer such appeal unless he deposits at least twenty-five per cent of such tax or duty payable on the basis of the order appealed against;

Provided that where in a particular case the National Tax Tribunal is of the opinion that the deposit of tax of duty under this sub-section would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the interest of revenue.

16. Procedure and powers of National Tax Tribunal.—(1) The National Tax Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice.

(2) Subject to the other provisions of this Ordinance, the National Tax Tribunal shall have powers to regulate its own procedure.

(3) The National Tax Tribunal shall have, for the purposes of discharging its functions under this Ordinance, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:

- (a) requiring the discovery and production of books of account and other documents;
- (b) subject the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1972) requiring any public record or document or a copy of such record or document from any office;
- (c) dismissing an appeal for default or deciding in, *ex parte*;
- (d) setting aside any order of dismissal of any appeal for default or any order passed by it, *ex parte*;
- (e) rectifying any mistake or error apparent on the face of record; and
- (f) any other matter which may be prescribed.

(4) All proceedings before the National Tax Tribunal shall be deemed to be Judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196, (45 of 1860) of the Indian Penal Code and the National Tax Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

17. Finality of order of National Tax Tribunal.—Any order passed by the National Tax Tribunal shall have be final and shall be given effect to accordingly and no civil court shall have or be entitled to exercise any jurisdiction, power or authority with respect to any of the matters falling within the jurisdiction of the National Tax Tribunal.

18. Decision by majority.—If the members of a Bench is consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson, who shall hear the point or points himself or nominate any other Member for such hearing and such point or points shall be decided according to the opinion of the majority, who have heard the case including those who first heard it.

19. Special Bench.—Where a judgment pronounced on a question of law by a Bench subsequently comes up for hearing before any Bench, it shall make a reference to the Chairperson of the Tribunal to constitute a special Bench consisting of three Judicial Members and two Technical Members to hear and decide such question of law.

20. Interim order.—Notwithstanding anything contained in any other provisions of this Ordinance or any other law for the time being in force, no interim order (whether by way of injunction or stay or otherwise) shall be made in relation to any appeal under this Ordinance, unless:

(a) copies of such appeal and all documents in support of the plea for such interim order are furnished to the party against whom the appeal is preferred; and

(a) opportunity is given to such party to be heard in the matter.

21. Power to punish for contempt—The National Tax Tribunal shall have and exercise the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise such power authority, for this purpose under the provisions of the Contempt of Courts Act, 1971, 70 of 1971, which shall have effect subject to the modification that—

- (a) any reference therein to a High Court shall be construed as including a reference to the National Tax Tribunal;
- (b) any reference to the Advocate General in section 15 of the said Act shall be construed as a reference to such law officer as the Central Government may specify in this behalf;

Provided that such matters shall be heard by a Special Bench consisting of three Judicial and two Technical Members constituted by the Chairperson.

22. Order of the National Tax Tribunal—The National Tax Tribunal may, after giving the parties to any proceedings before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

23. Transfer of pending cases from High Court—(1) On and from the appointed date, all matters and proceedings including appeals and references under the direct taxes and indirect taxes pending before any High Court immediately before that date shall stand transferred to the National Tax Tribunal.

(2) Where any matter or proceeding including appeals and references stand transferred from the High Court to the National Tax Tribunal under sub-section (1),—

- (a) the High Court shall, as soon as soon as may be after such transfer, forward the records pertaining to such matter proceeding to the National Tax Tribunal;
- (b) the National Tax Tribunal shall, on receipt of such records proceed to deal with such matter or proceeding from the stage at which it is transferred or from an earlier stage or de nova as it may deem fit;
- (c) the Chairperson shall constitute a Bench consisting of such number of Judicial and Technical Members as deems fit for hearing cases transferred under this section.

24. Appeal to Supreme Court—Any person aggrieved by any decision or order of the National Tax Tribunal may file and appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the National Tax Tribunal to him;

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within such time as it may deem fit,

CHAPTER IV

MISCELLANEOUS

25. Members, etc to be public servants—The Chairperson, Members and other officers and employees of the National Tax Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 45 of 1860.

26. Protection of action taken in good faith—No suit, prosecution or other legal proceedings shall lie against the National Tax Tribunal or its Chairperson, Member, officer or other employee in the discharge of any function for any loss or damage caused or likely to be caused by any act which is, in good faith, done or intended to be done in the discharge of any function under this Ordinance.

27. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such

provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before each House of Parliament.

28. Power to make rules. — (1) The Central Government may, by notification, make rules to carry out the provisions of this Ordinance,

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely;—

- (a) the procedure under sub-section (4) of section 11 for the investigation of charges of misbehaviour or incapacity against the Chairperson or other Members;
- (b) the salaries and allowances and other conditions of service of officers and other employees of the National Tax Tribunal under sub-section (2) of section 12;
- (c) the amount of fees payable under sub-section (2) of section 15;
- (d) the subject matter in respect of which the National Tax Tribunal may exercise the powers of a Civil Court under clause (f) of sub-section (3) of section 16;
- (e) any other matter which may be prescribed or in respect of which rules are required to be made by the Central Government.

29. Laying of rules before Parliament. — Every rule made under this Ordinance by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. Consequential amendments. — On and from the appointed date, the enactments mentioned in the Schedule shall stand amended in the manner specified therein.

THE SCHEDULE

[See section 30]

AMENDMENT OF CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE INCOME-TAX ACT, 1961

(43 OF 1961)

1. In section 2, after clause (29C), the following clause shall be inserted, namely:—
“(29D) “National Tax Tribunal” means the National Tax Tribunal established under section 3 of the National Tax Tribunal Ordinance 2003;”

2. In chapter XX,—

- (i) in section 254, in sub-section (4), for the words, figures and letters “Save as provided in section 256 or section 260A”, the words and figures “Save as provided in the National Tax Tribunal Ordinance, 2003” shall be substituted;
- (ii) sub-heading “C.—Reference to High Court” and sections 256, 258 and 259 shall be omitted;
- (iii) for section 260, the following shall be substituted, namely:—

“260. Effect to the decisions of Supreme Court and of the National Tax Tribunal.— (1) The Supreme Court upon hearing any reference made to it by the Appellate Tribunal under section 257 shall decide the question of law raised therein, and shall deliver its judgement thereon containing the grounds on which such decision is founded, and a copy of the judgement shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conforming to such judgement.

(2) Where the National Tax Tribunal delivers a judgement in an appeal filed before it or in any matter transferred to it under the National Tax Tribunal Ordinance, 2003, effect shall be given to the order of that Tribunal by the assessing officer on the basis of certified copy of the judgment.

(3) The cost of any reference to the Supreme Court which shall not include the fee for making the reference shall be at the discretion of the Court.”;

(iv) sub-heading “CC.-Appeals to High Court” and sections 260A and 260B thereunder shall be omitted;

(v) sub-heading “D.-Appeals to the Supreme Court” and sections 261 and 262 shall be omitted;

(vi) in section 263, in sub-section (3), after the words “the Appellate Tribunal,”; the words “National Tax Tribunal,” shall be inserted;

(vii) in section 264, in sub-section (7), after the words “the Appellate Tribunal,” the words “National Tax Tribunal,” shall be inserted.

PART II

AMENDMENTS TO THE WEALTH TAX ACT, 1957

(27 OF 1957)

1. In section 25, in sub-section (4), for the words “the High Court”, the words and figures “the National Tax Tribunal established under section 3 of the National Tax Tribunal Ordinance, 2003” shall be substituted.

2. Sections 27, 27A, 28 and 29 shall be omitted.

3. In section 29A, after the words “preferred to the Supreme Court”, the words and figures “under this Act before the commencement of the National Tax Tribunal Ordinance, 2003” shall be inserted.

4. Section 29B shall be omitted.

PART III

AMENDMENTS TO THE EXPENDITURE TAX, 1987

(35 OF 1987)

1. In section 13, in sub-section (4), for the words “or any order of a High Court or Supreme Court in any proceeding by way of reference or appeal under this Act or any order of any order of any court in any proceeding otherwise than by way of an appeal or reference under this Act”, the words “or any order of the National Tax Tribunal” shall be substituted.

2. In section 21, in sub-section (7), after the words “Appellate Tribunal,” the words “the National Tax Tribunal” shall be inserted.

3. In section 24, for the figures, brackets and words “254 to 262 (both inclusive).”, the figures “254, 255, 256, 260,” shall be substituted.

PART IV

AMENDMENTS TO THE INTEREST TAX ACT, 1974

(45 OF 1974)

1. In section 19, in sub-section (3), after the words “the Appellate Tribunal”, the words “the National Tax Tribunal” shall be inserted.

2. In section 20, in sub-section (7), for the words “Appellate Tribunal, the High Court or the Supreme Court”, the words “Appellate Tribunal, the National Tax Appellate Tribunal, the High Court or the Supreme Court” shall be substituted.

3. In section 21, for the figures, brackets and words “254 to 262 (both inclusive).”, the figures “254, 255, 257, 260” shall be substituted.

PART V

AMENDMENT TO THE FINANCE (No. 2) ACT, 1998

(21 OF 1998)

In section 76, in sub-section (1), the words, figures, letter and brackets "section 23, 23A, 24, 25, 28 and 29 of the Wealth-tax Act as amended and section 27A as inserted by the Finance (No. 2) Act, 1998", the words, figures and letter "sections 23, 23A, 24 and 25 of the Wealth-tax Act" shall be substituted.

PART VI

AMENDMENTS TO THE CUSTOMS ACT, 1962

(52 OF 1962)

1. In section 2, after clause (30), the following clause shall be inserted, namely:—
(30A) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Ordinance, 2003;".
2. In section 27, in sub-section (3), after the words "Appellate Tribunal", the words "the National Tax Tribunal" shall be inserted.
3. In section 27A, in the Explanation, after the words "Appellate Tribunal", the words "National Tax Tribunal" shall be inserted.
4. In section 28AA, in Explanations 1 and 2, after the words "Appellate Tribunal", the words "National Tax Tribunal" shall be inserted.
5. In Section 28AB, Explanations 1 and 2 after the words "Appellate Tribunal", the words "National Tax Tribunal" shall be inserted.
6. In Section 28B, in sub-section (1), after the words "Appellate Tribunal", the words "National Tax Tribunal" shall be inserted.
7. Section 130, 130A, 130B, 130C, 130D, 130E, and 130F, shall be omitted.
8. In Section 131, after the words "an appeal has been preferred to the Supreme Court", the words and figure "under this Act before the commencement of the National Tax Tribunal Ordinance, 2003" shall be inserted.
9. In Section 131C, clause (b) shall be omitted.

PART—VII

AMENDMENTS TO THE CENTRAL EXCISE ACT, 1944

(1 OF 1944)

1. In Section 2, after clause (f), the following shall be inserted, namely:—
(ff). "National Tax Tribunal" means the National Tax Tribunal established under Section 3 of the National Tax Tribunal Ordinance, 2003;".
2. In Section 11AA, in Explanations 1 and 2 after the words "Appellate Tribunal", the word "National Tax Tribunal" shall be inserted.
3. In Section 11AB, in Explanations 1 and 2 after the words, "Appellate Tribunal", the words, "National Tax Tribunal" shall be inserted.

4. In Section 11BB, in the Explanation after the words "Appellate Tribunal", the words, "National Tax Tribunal" shall be inserted.

5. In Section 35C in sub-section (4), for the words, figures and letters "Save as provided in section 35G or in section 35L", the words and figures "Save and provided in the National Tax Tribunal Ordinance 2003" shall be substituted.

6. Sections 35G, 35H, 35-I, and 35J, shall be omitted.

7. In section 35K,

(i) in sub-section (1), the words "High Court or the" shall be omitted;

(ii) in sub-section (2), the words "the High Court or" shall be omitted.■

8. Sections 35L and 35M shall be omitted.

9. In section 35N, after the words "an appeal has been preferred to the Supreme Court", the words and figures "under this Act before the commencement of the National Tax Tribunal Ordinance, 2003" shall be inserted.

A. P. J. ABDUL KALAM,
President.

T. K. VISWANATHAN,
Secy. to the Government of India.

L. M. SANGMA,
Deputy Secy. to the Govt. of Meghalaya;
Law (B) Department

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 7th November, 2003/Kartika 16, 1925 (Saka)

THE INDIAN MEDICINE CENTRAL COUNCIL (AMENDMENT) ORDINANCE, 2003

No. 8 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance further to amend the Indian Medicine Central Council Act, 1970.

Whereas Parliament is not in session and President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance;—

1. Short title and commencement.—This Ordinance may be called the Indian Medicine Central Council (Amendment) Ordinance, 2003.

(2) It shall come into force at once.

2. Amendment of section 2.—In the Indian Medicine Central Council Act, 1970, 48 of 1970 (hereinafter referred to as the principal Act), in section 2, after clause (c), the following clause shall be inserted, namely;—

“(ca) “medical college” means a college of Indian medicine, whether known as such or by any other name, in which a person may undergo a course of study or training including any post-graduate course of study or training which will qualify him for the award of a recognized medical qualification;”.

3. Substitution of new Chapter for Chapter IIA.—For Chapter IIA of the principal Act, the following Chapter shall be substid, namely:—

CHAPTER IIA

Permission for new Medical College Course, etc.

13A. Permission for establishment of new medical college, new course of study, etc.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force,—

(a) no person shall establish a medical college; or

(b) no medical college shall—

(i) open a new or higher course of study or training, including of post-graduate course of study or training, which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training including a post-graduate course of study or training,

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, “person” includes any University or a trust, but does not include the Central Government.

Explanation 2.—For the purposes of this section, “admission capacity”, in relation to any course of study or training, including post-graduate course of study or training, in a medical college, means the maximum number of students as may be fixed by the Central Government from time to time for being admitted to such course or training.

(2) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall refer the scheme to the Central Council for its recommendations,

(3) The scheme referred to in sub-section (2), shall be in such form and contain such particulars and be preferred in such manner and accompanied with such fee, as may be prescribed.

(4) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may,—

(a) if the scheme is defective and does not contain necessary particulars, give a reasonable opportunity to the person or medical college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Central Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (8) and submit it to the Central Government together with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(5) The Central Government may, after considering the scheme and recommendation of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical college concerned and having regard to the factors referred to in sub-section (8), either approve the scheme with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1)

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical college concerned a reasonable opportunity of being heard

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2)

(6) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order is communicated by the Central Government to the person or medical college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted and, accordingly the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted,

(7) In computing the time limit specified in sub-section (6), the time taken by the person or medical college concerned submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded.

(8) The Central Council while making its recommendations under clause (b) of sub-section (4) and the Central Government while passing an order, either approving or disapproving the scheme under sub-section (5), shall have due regard to the following factors, namely:—

(a) Whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under section 22.

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources:

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme.

(d) whether adequate hospital facilities having regard to the number of students likely to attend such medical college or course of study or training or the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme:

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or the course of study or training by person having recognised medical qualifications:

(f) the requirement of manpower in the field of practice of Indian medicine in the medical college

(g) any other factors as may be prescribed.

(9) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical college concerned.

13B. Non-recognition of medical qualifications in certain cases.—(1) Where any medical college established without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training including a post graduate course of study or training without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college on the basis of such study or training shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall not be deemed to be a recognised medical qualification for the purposes of this Act.

13C. Time for seeking permission for certain existing medical colleges.—(1) If any person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity on or before the commencement of the Indian Medicine Central Council (Amendment Ordinance, 2003, such person or medical college, as the case may be, shall seek within a period of three years from the said commencement, permission of the Central Government in accordance with the provisions of section 13A.

(2) If any person or medical college, as the case may be, fails to seek permission under sub-section (1), the provisions of section 13B, shall apply, so far as may be, as if, permission of the Central Government under section 13A has been refused.

A. P. J. ABDUL KALAM,
President.

T. K. VISWANATHAN,
Secretary to the Government of India.

L. M. SANGMA,
Deputy Secretary to the Govt. of Meghalaya,
Law (C) Department.